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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/742,317	12/22/2000	G. Kate Harris	9-13528-63US	5874

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OGILVY RENAULT
1981 MCGILL COLLEGE AVENUE
SUITE 1600
MONTREAL, QC H3A2Y3
CANADA

EXAMINER

JAMAL, ALEXANDER

ART UNIT	PAPER NUMBER
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2643

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DATE MAILED: 04/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/742,317

Applicant(s)

HARRIS, G. KATE

Examiner

Alexander Jamal

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 December 2000.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. **Claims 4,8** rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 4 recites the limitation "the downstream power value" in claim 1. There is insufficient antecedent basis for this limitation in the claim.

Claim 8 recites the limitation "the step of receiving" in claim 4. There is insufficient antecedent basis for this limitation in the claim. Examiner assumes applicant was referring to the step of receiving in Claim 7.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for

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patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

1. **Claims 1-3,5-11,13-25** rejected under 35 U.S.C. 102(e) as being anticipated by Verbin et al. (6520744).

As per **claim 1**, Verbin discloses a method of regulating data channel transmission (to control audible interference) of an ADSL modem during an off-hook event of POTS telephone in parallel with the modem (ABSTRACT). The method comprises the first step of determining the value of a performance quality control indicator (Col 9 lines 40-58). The next step is calculating a data transmission power level (power adjustment) (Col 6 lines 44-65) using one or more of the user controlled indicators (Col 9 lines 3-9). The calculated power levels are saved in the memory of the modem (Col 8 lines 53-59). The transmission power is set to the calculated power value during an offhook event (Col 7 lines 20-43) (Col 9 lines 3-9).

As per **claim 9**, Claim 9 is rejected for the same reasons as claim 1 and the additional step disclosed by Verbin comprising monitoring the attributes for changes in states (measuring the attributes) (Col 9 lines 40-58).

As per **claim 17**, Claim 17 is rejected for the same reasons as claim 1,9 and the fact that a computer program to perform the steps specified by claims 1 and 9 is inherent to a modem for the purpose of interfacing with and controlling the hardware in the modem.

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As per **claim 25**, Verbin discloses a method of regulating data channel transmission (to control audible interference) of an ADSL modem during an off-hook event of POTS telephone in parallel with the modem (ABSTRACT). The method comprises the first step of calculating default power levels using parameters based upon minimum data rate, minimum audible noise (Col 9 lines 3-58), linearity (offhook) measures (Col 10 lines 30-44). The calculated power levels are saved in the memory of the modem (Col 8 lines 53-59). The default values are applied in the absence of a user preference indication (Col 9 lines 3-9).

As per **claims 2,3,10,11** The power level calculating step comprises calculating both an upstream and downstream power reduction value (Col 6 lines 32-55). The transmit level of the CPE modem and the CO modem are both set.

As per **claims 5,16** Verbin's method comprises determining the offhook power level and creating a profile (default) power lever that is used in the power calculating step (Col 10 lines 13-22). The value is inherently presented to the user for the purpose of allowing the user to select that value or choose an alternative level for the purpose of optimizing the modem performance (Col 9 lines 1-8).

As per **claims 6,13** One of the performance qualities is audible interference in the POTS equipment (Col 9 lines 40-58).

As per **claims 7,14** The method inherently comprises the steps of providing the user means to input values for the control indicators and receiving the user's values for the purpose of allowing the user to choose which parameters to optimize (Col 9 lines 40-58).

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As per **claims 8,15** Since the modem will store values of previous initializations or fast retrains to set initial parameters for a future fast retrain (such as during an offhook condition), the receiving step will be performed during an offhook event whenever the user has input selected values for a set of initialization parameters that were stored as the default for an offhook condition.

As per **claims 18-24**, claims 18-24 are rejected for the same reasons as claims 10-16 and the fact that a computer program as per claims 18-24 is inherent to a modem that performs the steps of claims 10-16 for the purpose of interfacing with and controlling the hardware in the modem.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. **Claims 4,12** rejected under 35 U.S.C. 103(a) as being unpatentable over Verbin et al. (6520744) as applied to claim 1,9 above, and further in view of Ibrahim et al. (6563864).

As per **claims 4,12**, Verbin discloses applicant's claims 1,9 and the fact that the system calculates power levels for the transmit powers of the modems. However, Verbin does not

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specify that the setting step comprises a modem signaling the CO modem with the downstream power values.

Ibrahim teaches a power cutback method in splitterless ADSL during an offhook condition. The further teaches that a subscriber end modem may measure the downstream power value (received signals) and report that level back to the CO in order for the CO to adjust its transmit level accordingly (Col 3 lines 1-15) (Col 4 lines 40-45) (Col 6 line 64 to Col 7 line 36). He teaches that this will allow the modems to implement a politeness cutback in order to prevent overloading of inputs in short loop situation (where there is less loop attenuation) (Col 2 lines 22-32). It would have been obvious to one of ordinary skill in the art at the time of this application to implement the Cole's feedback method/Politeness cutback feature in Verbin's system in order to prevent overloaded inputs in short loop situations.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alexander Jamal whose telephone number is 703-305-3433. The examiner can normally be reached on M-F 8AM-5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Curtis A Kuntz can be reached on 703-305-4708. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9306 for regular communications and 703-872-9315 for After Final communications.

AJ
April 6, 2004


CURTIS KUNTZ
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2500